

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCHNEIDER RUCINSKI ENTERPRISES,

Plaintiff,

vs.

TOUCH ASIA; STRATASOFT, INC.; INX,
INC.; US COLO AT ONE WILSHIRE,

Defendants.

CASE NO. 08cv138-WQH-POR

ORDER

HAYES, Judge:

The matters before the Court are (1) the motion to dismiss for lack of diversity jurisdiction (Doc. # 52) filed by Defendant US COLO at One Wilshire; (2) the motion to dismiss for failure to state a claim or, in the alternative motion for more definite statement (Doc. # 53) filed by Defendant US COLO at One Wilshire; (3) the motion to dismiss for lack of subject matter jurisdiction or, in the alternative to dismiss for failure to state a claim, or in the alternative, for a more definite statement (Doc. # 54) filed by Defendants INX, Inc. and Stratasoft, Inc.; and (4) the motion for leave to file a second amended complaint filed by Plaintiff Schneider Rucinski Enterprises (Doc. # 59).

BACKGROUND

On January 23, 2008, Plaintiff Schneider Rucinski Enterprises filed a complaint against Defendants Touch Asia Outsourcing Solutions, Inc. (Touch Asia), Rudy Ngaw, Stratasoft, Inc. (Stratasoft), INX, Inc. (INX), Lane McCarty, Jason Pace, Mike Bridges, Michael Bridges, Jr., Navros Haji, and US COLO. (Doc. # 1). The complaint alleged twenty claims for relief,

1 including claims for specific performance, breach of contract, breach of lease agreement, breach of
 2 guarantee, claim and delivery, conversion, fraud and deceit, declaratory relief, account stated,
 3 imposition of constructive trust, injunctive relief, unfair competition, intentional and negligent
 4 interference with contractual relations, intentional and negligent interference with prospective
 5 economic advantage, breach of the implied covenant of good faith and fair dealing, negligent
 6 misrepresentation, fraudulent inducement, and civil conspiracy. (Doc. # 1).

7 On February 19, 2008, and March 14, 2008, Defendants INX, Inc. and Stratasoft, Inc. filed
 8 motions to dismiss for lack of subject matter jurisdiction. (Docs. # 7, 8, 17, 18). On April 29,
 9 2008, this Court entered an order granting Defendants' motions to dismiss the complaint for lack
 10 of subject matter jurisdiction. (Doc. # 48). The Court found that the complaint had failed to
 11 establish diversity jurisdiction or federal question jurisdiction. The Court dismissed the complaint
 12 its entirety without prejudice and granted Plaintiff leave to file and serve an amended complaint on
 13 or before May 30, 2008.

14 On May 30, 2008, Plaintiff filed a First Amended Complaint (FAC) against Defendants
 15 Stratasoft, Inc.; INX Inc.; US COLO One Wilshire; and Touch Asia. (Doc. # 51). In the FAC,
 16 Plaintiff asserts eighteen claims for relief, including intentional fraud and intentional
 17 misrepresentation, fraud and deceit, constructive trust fund, RICO violations, unfair business
 18 practices, intentional interference with contractual relations, negligent misrepresentation,
 19 injunctive relief, breach of contract, breach of implied good faith, computer fraud, fraudulent
 20 inducement, telemarketing fraud, warranty fraud, breach of fiduciary duty, civil conspiracy,
 21 fraudulent conversion and conveyance, and breach of guaranty. (Doc. # 51).

22 On June 19, 2008 Defendant US COLO filed a motion to dismiss for lack of diversity
 23 jurisdiction (Doc. # 52) and a motion to dismiss for failure to state a claim or, in the alternative,
 24 motion for a more definite statement (Doc. # 53). US COLO contends that the FAC fails to
 25 provide a short and plain statement of the nature of the dispute between the parties; and that it fails
 26 to identify the essential elements of each claim for relief or provide facts supporting these
 27 elements. (Doc. # 53-2). Defendants INX, Inc. and Stratasoft, Inc filed a motion to dismiss for
 28 lack of subject matter jurisdiction or, in the alternative to dismiss for failure to state a claim or, in

1 the alternative, for a more definite statement. (Doc. # 54). Defendants INX and Stratasoft contend
 2 that the FAC does not establish subject matter jurisdiction because there is neither complete
 3 diversity of parties nor any federal question presented. Defendants, contend in the alternative, that
 4 the FAC should be dismissed because Plaintiff has failed to make sufficient factual allegations by
 5 which Defendants may be held liable for the alleged claims.

6 On August 4, 2008, Plaintiff filed a motion for leave to further amend her complaint.
 7 (Doc. # 59). On August 15, 2008, Plaintiff filed a “response for more definitive statement of facts
 8 or (second amended complaint) draft.” (Doc. # 62). The proposed second amended complaint
 9 alleges that “this amended complaint likewise falls within the federal jurisdiction of this Court as it
 10 involves a complaint for RICO act violation, federal law, through the commission of mail and wire
 11 fraud, interstate transport of stolen properties and bank fraud.” (*Id.* at 2). Plaintiff contends that
 12 the RICO violations alleged in her FAC, “will be specifically stated and thoroughly shown in the
 13 Second Amended Complaint as requested by defendants.” (*Id.*)

14 **DISCUSSION**

15 The Court concludes that the first amended complaint does not establish diversity
 16 jurisdiction and fails to adequately allege a federal RICO claim. Rule 15 of the Federal Rules of
 17 Civil Procedure mandates that leave to amend “be freely given when justice so requires.” Fed. R.
 18 Civ. P. 15(a). This policy is applied with “extraordinary liberality.” *Morongo Band of Mission*
 19 *Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Once an answer to the complaint has been
 20 filed, “leave to amend should be granted as unless amendment would cause prejudice to the
 21 opposing party, is sought in bad faith, is futile, or creates undue delay.” *Johnson v. Mammoth*
 22 *Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992); *see also Howey v. United States*, 481 F.2d
 23 1187, 1190 (9th Cir. 1973) (“[u]ndue delay, bad faith, futility of amendment, and prejudice to
 24 opposing party are all relevant in determining propriety of a motion for leave to amend . . .”).

25 In this case, Plaintiff moves to file her second amended complaint in an attempt to provide
 26 “a more defined statement as requested” by Defendants. (Doc. # 62 at 2). The proposed second
 27 amended complaint attempts to allege facts to support a federal RICO claim. Allowing Plaintiff to
 28 file a second amended complaint will not create undue delay and will not unduly prejudice the

1 Defendants. The Court cannot conclude that the proposed amendments would be futile based on
2 the pleadings or that Plaintiff is proceeding in bad faith.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that (1) the motion to dismiss for lack of diversity jurisdiction
5 (Doc. # 52) filed by Defendant US COLO is GRANTED; (2) the motion to dismiss for failure to
6 state a claim or, in the alternative motion for more definite statement (Doc. # 53) filed by
7 Defendant US COLO is GRANTED; (3) the motion to dismiss for lack of subject matter
8 jurisdiction or, in the alternative to dismiss for failure to state a claim, or in the alternative, for a
9 more definite statement (Doc. # 54) filed by Defendants INX, Inc. and Stratasoft, Inc. is
10 GRANTED; and (4) the motion for leave to file a second amended complaint filed by Plaintiff
11 Schneider Rucinski Enterprises (Doc. # 59) is GRANTED. Plaintiff shall file the Second
12 Amended Complaint specifically set forth in Document # 62 within 10 days of the date of this
13 order.

14 DATED: November 7, 2008

15 
16 **WILLIAM Q. HAYES**
17 United States District Judge

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